

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
SW/Corner New Battle Grove Road, * ZONING COMMISSIONER
and South Bend Avenue * OF BALTIMORE COUNTY
(7639 New Battle Grove Road) * OF BALTIMORE COUNTY
15th Election District * Case No. 89-167-SPH
7th Councilmanic District *
Frances Hartka *
Petitioner *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a special hearing to approve the nonconforming use of the subject property as a tavern in a residential zone, as more particularly described in Petitioner's Exhibit 1.

The Petitioner appeared, testified, and was represented by John W. Nowicki, Esquire. Also appearing on behalf of the Petition were Leonard Hartka, Petitioner's son, Catherine Rook, and Frank Lee, a registered professional property line surveyor. There were no Protestants.

Testimony indicated that the subject property, known as 7639 New Battle Grove Road, is zoned D.R. 5.5 and is improved with a two-story building, which includes a one-story addition on both the front and the rear of the main structure, and a separate frame garage. The subject property is a triangular lot consisting of 0.21 acres more or less and is located at the corner of New Battle Grove Road and South Bend Avenue. The one-story addition in front and part of the 1st floor of the two story portion of the building are collectively used as a small tavern, known as the South Bend Tavern. Testimony indicated that a tavern has existed on the subject property, previously owned by Petitioner's uncle, John Fauvak, since prior to 1938. On or about December 11, 1953, the Petitioner and her husband purchased the property from her uncle and continued the operation of the tavern. The upstairs portion of the main structure and the

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rear addition of the building have been used as living quarters over the years for various individuals, including John Fauvak, the original owner, Mr. & Mrs. Hartka, and their son, Leonard.

Frances Hartka testified that during all the years that she and her husband operated the tavern, it has always been the same size and area as it exists today. She testified that during the second World War period, she regularly visited her uncle's tavern and, in fact, worked there during those years. Mrs. Hartka testified the tavern has always been operated as a tavern and fully complies with all the requirements of Sections 104.1 and 104.3 of the Baltimore County Zoning Regulations (B.C.Z.R.).

Leonard Hartka testified he was born and raised on the subject property. He further testified that the property has been used as a tavern during his entire lifetime.

Catherine Rook, who is the daughter of John Fauvak, testified that during the 1940s, her father operated the tavern at this location and that they lived on the premises during that time. She testified the tavern was always open and was never closed for more than a day at a time. She further testified that the tavern's size and area as it exists today, is the same as it was then.

Zoning came officially to Baltimore County on January 2, 1945, when, pursuant to previous authorization by the General Assembly, the County Commissioners adopted a comprehensive set of zoning regulations.

The Commissioners were first authorized to adopt comprehensive planning and zoning regulations in 1939 (Laws of Maryland, 1939, ch. 715). At the next biennial session of the General Assembly, this authorization was repealed, and a new authorization was enacted (Laws of Md.,

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1941, ch. 247). Before any such regulations were issued, the Legislature authorized the Commissioners to make special exceptions to the regulations (Laws of Md., 1943, ch. 877). The first regulations were adopted and took effect on January 2, 1945. See Kahl v. Cons. Gas Elec. Light. and Par. Co., 191 Md. 249, 254, 60 A.2d 754 (1948); Calloun v. County Board of Appeals, 262 Md. 265, 277 A.2d 589 (1971).

Section II of those regulations created seven zones, four being residential, one commercial, and two industrial. See McKemy v. Baltimore County, Md., 39 Md. App. 257, 385 A.2d 96 (1978).

Those original regulations provided for nonconforming uses. The statute read as follows:

"A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue, provided, however, upon any change from such nonconforming use to a conforming use, or any attempt to change from such nonconforming use to a different nonconforming use or any discontinuance of such nonconforming use for a period of one year, or in case a nonconforming structure shall be damaged by fire or otherwise to the extent of seventy-five (75%) percent of its value, the right to continue to resume such nonconforming use shall terminate, provided, however, that any such lawful nonconforming use may be extended or enlarged to an extent not more than once again the area of the land used in the original nonconforming use." Section XI, 1945, B.C.Z.R.

Baltimore County adopted a new set of comprehensive zoning regulations on March 30, 1955. The issue of nonconforming uses are dealt with in Section 104 of those regulations. The Section then read:

"104.1 - A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75%) percent of its replacement cost at the time of such loss, the right to con-

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tinue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel or land shall hereafter be extended more than 25% of the ground floor area of buildings so used."

Section 104.1 was changed to its current language on March 15, 1976 by Bill No. 18-76. The current effective regulation reads as follows:

"A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these Regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75%) percent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of buildings so used. (B.C.Z.R., 1955; Bill No. 18, 1976)"

On August 4, 1980, the current language found in Section 104.2 was added to the B.C.Z.R. by Bill No. 167-80. This regulation placed an exception upon the general nonconforming rule for Special Exception office buildings. The second reads as follows:

"Exception. Any contrary provision of these regulations notwithstanding, an office building that was authorized by grant of a special exception and that becomes damaged to any extent or destroyed by casualty may be fully restored in accordance with the terms of the special exception. (Bill No. 167, 1980)"

As with all non-conforming use cases, the first task is to determine what lawful non-conforming use existed on the subject property prior to January 2, 1945, the effective date of the adoption of the Zoning Regulations and the controlling date for the beginning of zoning.

The second principle to be applied, as specified in Section 104.1, is whether or not there has been a change in the use of the subject

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property. A determination must be made as to whether or not the change is a different use, and therefore, breaks the continued nature of the non-conforming use. If the change in use is found to be different than the original use, the current use of the property shall not be considered non-conforming. See McKemy v. Baltimore County, Md., 39 Md. App. 257, 385 A.2d 96 (1978).

When the claimed non-conforming use has changed, or expanded, then the Zoning Commissioner must determine whether or not the current use represents a permissible intensification of the original use or an actual change from the prior legal use. In order to decide whether or not the current activity is within the scope of the non-conforming use, the Zoning Commissioner should consider the following factors:

(a) To what extent does the current use of these lots reflect the nature and purpose of the original non-conforming use;

(b) Is the current use merely a different manner of utilizing the original non-conforming use or does it constitute a use different in character, nature, and kind;

(c) Does the current use have a substantially different effect upon the neighborhood;

(d) Is the current use a "drastic enlargement or extension" of the original non-conforming use."

It is clear from the testimony and evidence presented, all of which was uncontradicted, that the subject property has been used as a tavern continuously and without interruption since prior to the adoption of the B.C.Z.R. The testimony clearly establishes that there has never been a lapse in such use and that the subject tavern has been in operation since the late 1930s. Specifically, the evidence substantiates the tavern was in operation in the early 1940s, prior to 1945, and that a nonconforming use of the subject property as a tavern properly exists.

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The property is located, however, within the Chesapeake Bay Critical Areas. Pursuant to Section 104.3 of the B.C.Z.R., the relief requested is subject to conditions set forth in Sections 104.1, 104.2, and 307.2 of the B.C.Z.R. Clearly, the requirements of Section 104.1 have been met as has been established in the facts set forth above. The requirements of Section 104.2 do not apply in this instance as this Section only concerns itself with office building uses. The requirements of Section 307.2, however, deal with variances in Critical Areas. Therefore, there must be a finding that the continuation of this nonconforming use complies with all the requirements of Section 307.2 of the B.C.Z.R.

After due consideration of the testimony and evidence presented, in the opinion of the Zoning Commissioner, the relief requested sufficiently complies with the requirements of Sections 307.1, 307.2 and 500.14 of the Baltimore County Zoning Regulations (B.C.Z.R.) and should therefore be granted. There is no evidence in the record that the subject variance would adversely affect the health, safety, and/or general welfare of the public. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioner.

The facts and evidence presented tend to establish that special conditions or circumstances exist which are peculiar to the land or structures located within the Chesapeake Bay Critical Areas of Baltimore County; that to deny the relief requested would result in practical difficulty, unreasonable hardship, or severe economic hardship upon the Petitioner; and that strict compliance with the Chesapeake Bay Critical Area requirements and the B.C.Z.R. would deprive the Petitioner of rights commonly enjoyed by other properties in similar areas within the Chesapeake Bay Critical Areas in Baltimore County. The granting of the relief requested

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will not confer upon the Petitioner any special privilege that would be denied by the critical area regulations to other lands or structures within the Chesapeake Bay Critical Areas. Clearly, the request is not based upon conditions or circumstances which are the result of the Petitioner's actions, nor does the request arise from a condition relating to land or building use, either permitted or non-conforming, on another property. The relief requested is in harmony with the general spirit and intent of the Critical Areas legislation for Baltimore County and conforms to the requirements as set forth in Section 500.14 of the B.C.Z.R.

In accordance with Section 500.14 of the B.C.Z.R., the Director of the Department of Environmental Protection and Resource Management has submitted recommendations which describe what steps the Petitioner must take to insure that the relief requested complies with the following Chesapeake Bay Critical Areas requirements to:

- 1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;
- 2) Conserve fish, wildlife, and plant habitat; and
- 3) Be consistent with established land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

These recommendations shall be attached hereto and become a permanent part of the decision rendered in this case. There is no evidence in the record that the relief requested would adversely affect the health, safety, and/or general welfare of the public provided there is compliance with the requirements of the Department of Environmental Protection and Resource Management as more fully described below.

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Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 17th day of November, 1988 that the Petition for Special Hearing to approve the nonconforming use of the subject property as a tavern, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

- 1) The Petitioner shall comply with all requirements and recommendations of the Department of Environmental Protection and Resource Management, as set forth in their comments dated September 13, 1988, attached hereto and made a part hereof.
- 2) Petitioner shall submit a new site plan of the building which clearly outlines the areas used as tavern space and those areas used as living quarters, including the size and dimensions for each. Said new plan shall be submitted to the Zoning Commissioner prior to January 15, 1989.

JRH:bjs
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Date 11/17/88
By Robert Haines

Robert Haines
ROBERT HAINES
Zoning Commissioner
for Baltimore County

PETITION FOR SPECIAL HEARING
TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: **89-167-SPH**

The undersigned, legal owner(s) of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve a nonconforming use, Existing Tavern in a residential zone.

MAP 4A
SE-4C
E.D. 15
DATE 11/24/88
200
1000
DP

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser: _____
(Type or Print Name)
Signature _____
Address _____
(Type or Print Name)
City and State _____
Signature _____

Legal Owner(s):
FRANCES C. HARTKA
(Type or Print Name)
Signature _____
Address _____
(Type or Print Name)
City and State _____
Signature _____

Attorney for Petitioner:
John W. Nowicki
Address: 7632 New Battle Grove Road
Phone No. _____
Baltimore, Maryland 21222
City and State _____
6 North Point Road
Baltimore, Maryland 21219
Name, address and phone number of legal owner, contract purchaser or representative to be contacted
Name _____
Address _____
Phone No. _____
Attorney's Telephone No.: 477-9400

ORDERED BY THE Zoning Commissioner of Baltimore County, this 31st day of August, 1988, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 3rd day of November, 1988, at 10 o'clock A.M.

J. Robert Haines
Zoning Commissioner of Baltimore County.

Baltimore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21284 494-3333

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Special Hearing
CASE NUMBER: 89-167-SPH
SUC New Battle Grove Road and South Bend Avenue
(7639 New Battle Grove Road)
15th Election District - 7th Councilmanic
Petitioner(s): Frances Hartka
HEARING SCHEDULED: THURSDAY, NOVEMBER 3, 1988 at 10:00 a.m.*

*IF PHASE II OF SNOW EMERGENCY PLAN IS IN EFFECT ON THIS DATE, CASE MAY BE RESCHEDULED. CALL 494-3391 TO CONFIRM NEW DATE.

Special Hearings A nonconforming use, existing tavern in a residential zone.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

NOTE:
IF PHASE II OF THE SNOW EMERGENCY PLAN IS IN EFFECT IN BALTIMORE COUNTY BY 8:30 A.M. ON THE DATE OF THE ABOVE HEARING, SUCH HEARING WILL BE POSTPONED AND TENTATIVELY RESCHEDULED FOR THURSDAY, DECEMBER 22, 1988.
PLEASE TELEPHONE DODGET CLERK (494-3391) TO CONFIRM.

J. ROBERT HAINES
Zoning Commissioner of Baltimore County

cc: Mr. Frances Hartka
John W. Nowicki, Esq.
Chesapeake Bay Critical Area Commission
File

Phone: 687-4922

FRANK S. LEE
Registered Land Surveyor

1277 NEIGHBORS AVE. - BALTIMORE, MD. 21237

July 6, 1988

No. 7639 New Battle Grove Road
Lot 168, Plat No. 2, Battle Grove, 7/124
15th District Baltimore County, Maryland

Beginning for the same at the intersection formed by the southwest side of New Battle Grove Road with the northwest side of South Bend Avenue, thence running and binding on the southwest side of New Battle Grove Road North 57 degrees 08 minutes 40 seconds West 147.58 feet, thence leaving New Battle Grove Road and running South 32 degrees 51 minutes 20 seconds West 123.80 feet to the northwest side of South Bend Avenue, and thence binding on the northwest side thereof North 82 degrees 52 minutes East 192.63 feet to the place of beginning.

Containing 0.21 acres of land more or less.



NO CASH CONSIDERATION
NO TAX OR STAMPS

LIBER 6303 P. 09 #71

DEED
THIS DEED, made this 17th day of June, in the year One Thousand Nine Hundred and Eighty-one, by and between FRANCES C. HARTKA, widow, of Baltimore County, Maryland, party of the first part, Grantor, and LEONARD C. HARTKA, of Baltimore County, Maryland, party of the second part, Grantee.

WITNESSETH, that for no consideration, the said party of the first part does grant and convey unto the said party of the second part (the said party of the first part reserving, however, a life estate for and during the term of her natural life, together with the absolute right and privilege to grant, convey, lease, sell, mortgage, limit or otherwise dispose of [except by Last Will and Testament] the hereinabove described property absolutely during her lifetime as if this Deed had not been executed), his personal representatives, heirs, and assigns, in fee simple, all that lot of ground situate, lying and being in Baltimore County, State of Maryland, aforesaid, and described as follows, that is to say:

BEGINNING for the same on Bear Creek and at South Bend Avenue and East Battle Grove Avenue and designated as Lot number one hundred sixty-eight (168) on Plat No. 2 of Battle Grove, recorded among the Land Records of Baltimore County in Plat Book W.P.C. No. 7, folio 124.

BEING the same property which by deed dated February 11, 1952 and recorded among the Land Records of Baltimore County in Liber G.L.B. No. 2073, folio 404c., was granted and conveyed by Berenice Hatfield, unmarried unto John Pavuk and Anna Pavuk, his wife, for and during their joint lives and the life of the survivor, with full power to sell, lease, etc., (the said Anna Pavuk having departed this life on the 25th day of December, 1952 thereby vesting absolute fee simple title in and to her husband).

BEING ALSO the same property which by deed dated December 11, 1953, and recorded among the Land Records of Baltimore County in Liber G.L.B. No. 2404, folio 308, was granted and conveyed by John Pavuk, widower, unto Theodore J. Hartka and Frances C. Hartka, his wife, as tenants by the entireties, the said Theodore J. Hartka having departed this life on or about November 28, 1980, and the said Frances C. Hartka being the party of the first part and grantor herein.

TOGETHER with the buildings and improvements thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging or in any way appertaining.

STATE DEPARTMENT OF ASSESSMENTS & TAXATION
TRANSFER TAX NOT REQUIRED
RECORDED & RECEIVED
BALTIMORE COUNTY, MARYLAND
JUL 11 1988
CLERK

Baltimore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21284 494-3333
J. Robert Haines Zoning Commissioner
Date: 10/29/88

Mr. Frances Hartka
7639 New Battle Grove Road
Baltimore, Maryland 21222

Re: Petition for Special Hearing
CASE NUMBER: 89-167-SPH
SUC New Battle Grove Road and South Bend Avenue
(7639 New Battle Grove Road)
15th Election District - 7th Councilmanic
Petitioner(s): Frances Hartka
HEARING SCHEDULED: THURSDAY, NOVEMBER 3, 1988 at 10:00 a.m.*

Dear Mr. Hartka:

Please be advised that \$103.75 is due for advertising and posting of the above-referenced property. All fees must be paid prior to the hearing. Do not remove the sign and post set(s) from the property from the time it is posted by this office until the day of the hearing itself.

THIS FEE MUST BE PAID AND THE ZONING SIGN(S) AND POST(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Please make your check payable to Baltimore County, Maryland and bring it along with the sign(s) and post(s) to the Zoning Office, County Office Building, Room 111, Towson, Maryland 21284 fifteen (15) minutes before

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 059061

DATE: 11/3/88 ACCOUNT: R-01-815-000

AMOUNT: \$ 103.75

RECEIVED: Frances Hartka

FOR: Posting and Advertising 11/3/88 Hearing

B C14*****10375:89-167-SPH

VALIDATION OR SIGNATURE OF CASHIER

LIBER 6303 PAGE 4

TO HAVE AND TO HOLD the said lot of ground and premises above described and mentioned and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining, unto and to the proper use of the said party of the second part (the said party of the first part reserving, however, a life estate for and during the term of her natural life, together with the absolute right and privilege to grant, convey, lease, sell, mortgage, limit or otherwise dispose of [except by Last Will and Testament] the hereinabove described property absolutely during her lifetime as if this Deed had not been executed), his personal representatives, heirs, and assigns, in fee simple.

AND the said party of the first part hereby covenants that she has not done or suffered to be done any act, matter or thing whatsoever to encumber the property hereby conveyed; that she will specially warrant the property granted; and that she will execute such further assurances as may be requisite.

WITNESS the hand and seal of said Grantor.

Frances C. Hartka (SEAL)
FRANCES C. HARTKA

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, that on this 17th day of June, 1981, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County of Baltimore, aforesaid, personally appeared FRANCES C. HARTKA, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and she acknowledged that she executed the same for the purposes therein contained, and in my presence signed and sealed the same.

Notary Public
JUL 1 1981
CLERK
J. Robert Haines

CERTIFICATE OF PUBLICATION

TOWSON, MD., Oct. 17, 1988
THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on Oct. 13, 1988

THE JEFFERSONIAN,
S. Zabe Orlan
Publisher

Bo# 05168
Reg # M20361
Price # 41.05 Jeff

CERTIFICATE OF PUBLICATION

OFFICE OF Dundalk Eagle
4 N. Center Place
P.O. Box 8936
Dundalk, Md. 21222
October 13, 1988

THIS IS TO CERTIFY, that the annexed advertisement of J. Robert Haines in the matter of Zoning Hearings - Case #89-167-SPH - P.O. #05169 - Reg. #M20360 - 95 was inserted in The Dundalk Eagle a weekly newspaper published in Baltimore County, Maryland, once a week for one consecutive weeks before the 14th day of October, 1988; that is to say, the same was inserted in the issues of October 13, 1988

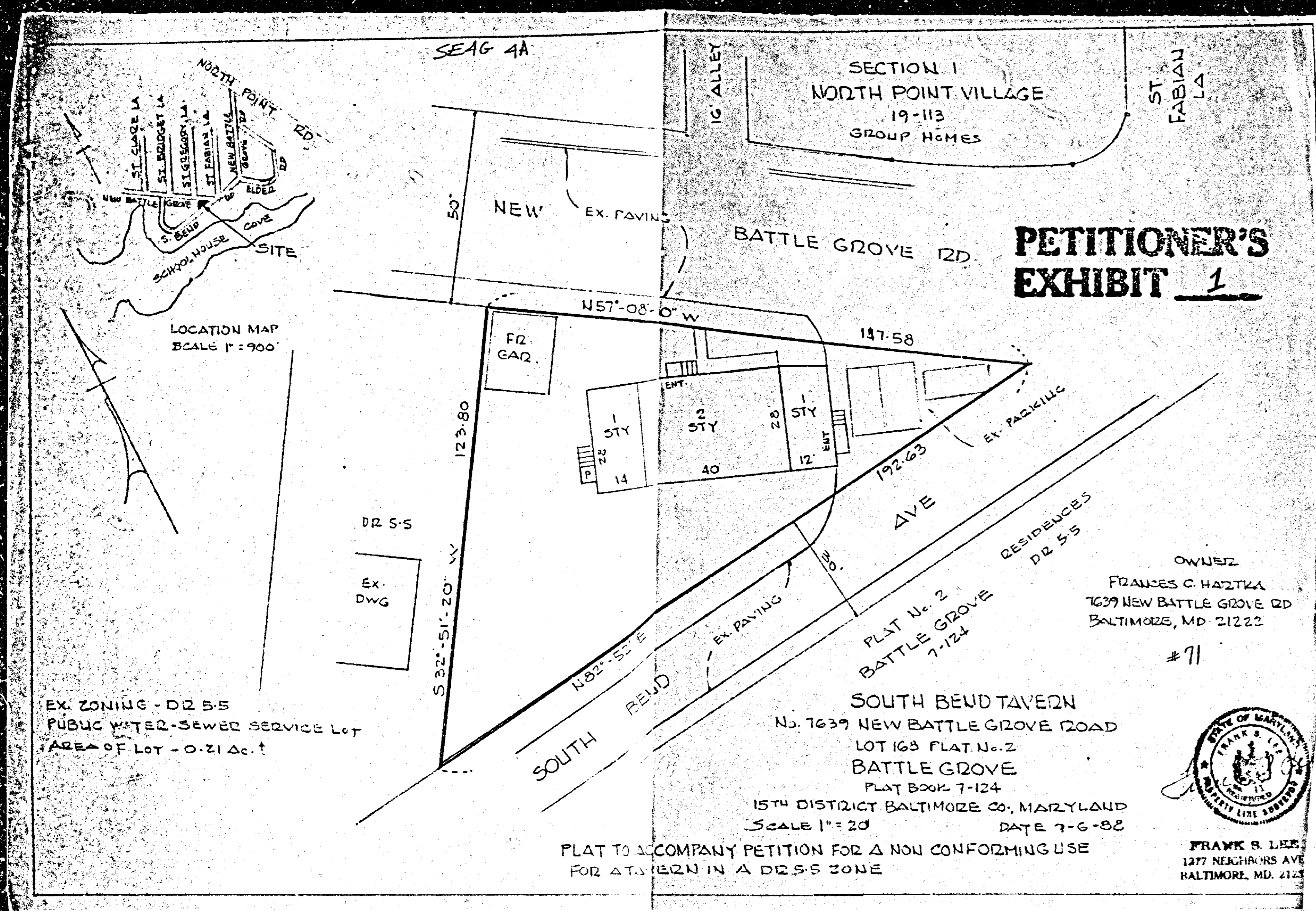
Kimbel Publication, Inc.
per Publisher.
By K.C. Ode

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 15th Date of Posting: 10/14/88
Posted for: Special Hearing
Petitioner: Frances Hartka
Location of property: 7639 New Battle Grove Rd. & South Bend Ave. - 7639 New Battle Grove Rd. - 15th Election District
Location of Sign: Posting - New Battle Grove Rd. - 7639 New Battle Grove Rd. - 15th Election District
Remarks: Posting on window of #17 E. Chesapeake Ave.
Posted by: [Signature] Date of return: 10/14/88
Number of Signs: 1

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 8th Date of Posting: 10/14/88
Posted for: Various
Petitioner: R.H.M.D. 15 E. Ave.
Location of property: 115 E. Chesapeake Ave., 15th Election District
Location of Sign: Posting - E. Chesapeake Ave. - 115 E. Ave. - 15th Election District
Remarks: Posting on window of #17 E. Chesapeake Ave.
Posted by: [Signature] Date of return: 10/14/88
Number of Signs: 1



89-167-SPH
BALTIMORE COUNTY OFFICE OF PLANNING & ZONING
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204
Your petition has been received and accepted for filing this
31st day of August, 1988.
J. Robert Haines
ZONING COMMISSIONER
Received by: James E. Dyer
Chairman, Zoning Plans
Advisory Committee
Petitioner: Frances Hartka
Petitioner's Attorney: John W. Nowicki

PLEASE PRINT CLEARLY

NAME	ADDRESS
Frances Hartka	7639 New Battle Grove Rd.
CATHERINE ROOBY	1909 JEFFERSON RD
LEONARD HARTKA	1205 GRIFFITH PLACE
FRANK LEE	1277 NEIGHBORS AVE 21237

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE
TO: Mr. J. Robert Haines
Zoning Commissioner
DATE: September 13, 1988
FROM: Mr. Robert W. Sheesley
SUBJECT: Hartka Property (South Bend Tavern) - Item #71
Petition for Zoning Variance Item #43

Subject property is located on the northwest corner of New Battle Grove Road and South Bend Avenue. The site is within the Chesapeake Bay Critical Area and is classified as Limited Development Area.
The applicant has filed a petition for a special hearing requesting a non-conforming use for an existing tavern in a residential area zoned DR 5.5.
In accordance with the Chesapeake Bay Critical Area Program, all project approvals shall be based on a finding that projects are consistent with the following goals of the Critical Area Law:
1. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands;
2. Conserve fish, wildlife and plant habitat; and
3. Establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts. (COMAR 14.15.10(1)(2)(3))
The proposed development will comply with the law provided that the zoning petition is conditioned on compliance with the following requirements:
1. Nine major deciduous trees or 18 conifers are planted and maintained on the lot. A combination of these two tree types is acceptable provided that 9,000 square feet of tree cover is provided. A major deciduous tree is estimated to cover 1,000 square feet and a conifer, 500 square feet at maturity.
2. Storm water runoff from impervious surfaces associated with this petition should be directed over pervious areas such as lawn to encourage maximum infiltration.
3. Rooftop runoff should be directed through down-spouts and into a dry well of approved design to encourage maximum infiltration (see attached dry well design).
Upon compliance with the above recommendations, this project will be approved. Please contact Mr. David C. Flowers at 494-3980 if you have any questions.

Robert W. Sheesley
Robert W. Sheesley, Director
Department of Environmental Protection
and Resource Management
RWG:DCF:tg
Attachment
cc: The Honorable Ronald B. Hickernell

Baltimore County
Fire Department
Towson, Maryland 21204 2586
494-4500
Paul H. Reineke
Chief
September 12, 1988
J. Robert Haines, Zoning Commissioner
Office of Planning & Zoning
Baltimore County Office Building
Towson, Maryland 21204
Re: Property Owner: Frances Hartka
Location: SW/C New Battle Grove Road & Bend Avenue
Item No.: 71
Zoning Agenda: Meeting of 8/30/88
Dennis F. Rasmussen
County Engineer
Gentlemen:
Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.
() 1. Fire hydrants for the referenced property are required and shall be located at intervals of _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
() 2. A second means of vehicle access is required for the site.
() 3. The vehicle dead end condition shown at _____ EXCEEDS the maximum allowed by the Fire Department.
() 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
(X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.
() 6. Site plans are approved, as drawn.
() 7. The Fire Prevention Bureau has no comments at this time.
NOTED & APPROVED: John F. O'Neill
Fire Prevention Bureau
REVIEWER: [Signature]
Special Inspection Division
/s/

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE
October 24, 1988
COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204
John W. Nowicki, Esquire
6916 North Point Road
Baltimore, Maryland 21219
RE: Item No. 71 - Case No. 89-167-SPH
Petitioner: Frances Hartka
Petition for Zoning Variance
MEMBERS
Bureau of Engineering
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development
Dear Mr. Nowicki:
The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.
Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.
Very truly yours,
James E. Dyer
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee
JED:dt
cc: Frank S. Lee
1277 Neighbors Avenue
Baltimore, Maryland 21237

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
887-3355
J. Robert Haines
Zoning Commissioner
November 17, 1988
John Nowicki, Esquire
6916 North Point Road
Baltimore, Maryland 21219
RE: PETITION FOR SPECIAL HEARING
SW/Corner New Battle Grove Road and South Bend Avenue
(7639 New Battle Grove Road)
12th Election District - 7th Councilmanic District
Frances Hartka - Petitioner
Case No. 89-167-SPH
Dear Mr. Nowicki:
Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted in accordance with the attached Order.
In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 494-3391.
Very truly yours,
J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner
for Baltimore County
JRH:bjs
cc: Ms. Catherine Rook
1909 Jefferson Road
Baltimore, Maryland 21222
People's Counsel
File

